IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9116 OF 2005

Monica Misquitta (since deceased)

through Mrs.Bernice Colaco .. Petitioner

Versus

Syed M. Hussain Zaid & Ors. .. Respondents

Mr.K.B.Adyanthaya for petitioner
Mr.B.P.Pandey with Rajendra Narvankar for respondent No.2
Mr.D.A.Joseph with Ms.L.Biswas i/b. David and Associates for respondent Nos. 3 and 4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 7th Febryary 2006.

P.C.

. Heard Mr.Adyanthaya for petitioner and Mr.Joseph for respondent Nos. 3 and 4 and Mr.Pande for respondent No.2.

2. Mr.Pande appearing for respondent No.2 makes a statement that within a period of two weeks from today, he would furnish to the petitioner - plaintiff's Advocate or petitioner plaintiff details pertaining to the status of flat No.1 and other flats which have been transferred by the defendant No.2, as alleged in the petition. He states that upon such details being furnished, the petitioner plaintiff may take out fresh chamber summons and it can be considered by the trial court on its own merits and uninfluenced, by the order under challenge.

3. Mr.Adyanthaya upon this statement of Mr.Pande, has no objection to the Chamber Summons No.804 of 2004 being dismissed as withdrawn with liberty to take out fresh chamber summons after abovementioned details are furnished. Above course of action was suggested because Mr.Joseph appearing for respondent Nos. 3 and 4 contended that Schedule to the present chamber summons

which purports to implead respondent Nos. 3 and 4 is misconceived because they are not the transferees or purchasers of Flat No.1, but have been allotted flat No.4 by Original defendants.

4. Therefore, following order:-

(a) Chamber summons No.804 of 2004 is dismissed as withdrawn. Liberty, however, is reserved to petitioner plaintiff to take out fresh chamber summons in Suit No.4171 of 1984 for amendment to the plaint within a period of four weeks from the date of receipt of details from the second respondent - original defendant No.2.

(b) Mr.Pande undertakes to furnish the above details within two weeks from today to Mr.Adyanthaya or petitioner-plaintiff.

(c) Petition disposed of. All contentions are kept open and the trial court should dispose of fresh chamber summons, if taken out, on its own merits and uninfluenced by the earlier order.

(S.C.DHARMADHIKARI, J)